



DEPARTMENT OF HEALTH SERVICES

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October 14, 1991

Letter No.: 91-89

TO: All County Welfare Directors
All County Welfare Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

SUBJECT: R-55-90 - FINAL MEDI-CAL REGULATIONS AND DRAFT PROCEDURES FOR
GUARDIAN/CONSERVATOR FEES

The purpose of this letter is to provide you with a copy of the enclosed final regulation Title 22, California Code of Regulations, section 50549.3 and draft Medi-Cal Procedures Manual Section. This regulation change sets forth the conditions under which guardian/conservator fees may be considered an allowable deduction when computing the Medi-Cal share of cost (SOC). Counties must implement this regulation using the attached draft Procedure. This Regulation applies to all 58 counties without exception.

EFFECTIVE DATE:

Section 50549.3 became effective on November 2, 1990 as an emergency regulation and governs the treatment of guardian/conservator fees when computing the Medi-Cal share of cost. Various testimony received during the public comment period resulted in several post-hearing changes which are shown in the attached final regulation using the standard strike-out and underline format. The changes shown are technical changes which clarify the requirements for allowing guardian/conservator fees as a deduction. The final regulation language is effective April 1, 1991.

IMPLEMENTATION:

Intake Cases:

All application cases are to be reviewed at intake to determine if a guardian/conservator exists. If so, the guardian/conservator must be informed of the requirements of Section 50549.3 and given the opportunity to provide the required verification. Implementation of intake review must begin no later than January 1, 1992.

Ongoing Cases:

In as much as this deduction was not allowable until November 2, 1990 (and then only in the very specific conditions listed in the regulation), implementation should have resulted in a lower share of cost (SOC) for those cases meeting the requirements for the deduction. Therefore, counties must review all cases involving conservatees to determine whether the beneficiary's income may qualify under Section 50549.3. Where all income is

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clearly from a source which will not qualify for fee deduction (such as Social Security Title II payments) there is no need to contact the beneficiary. However, if there is any question whether a guardian/conservator is necessary as a condition of payment, the county must provide the beneficiary's guardian/conservator with a written notice explaining the conditions under which fees will be allowed as a deduction as well as the verification requirements. The guardian/conservator must be given a reasonable period to provide the required information and verification.

Because of the November 2, 1990 effective date, beneficiaries' SOC should have been revised at that time if all conditions and verification were provided. If due to unavoidable delays in the issuance of these guidelines the SOC for affected beneficiaries was not adjusted at that time, the SOC must now be recomputed and retroactively adjusted by the county in accordance with Section 50653.3. These retroactive adjustments must be completed by March 31, 1992.

Should any county identify cases where guardian/conservator fees were allowed as a deduction in past months and the beneficiary's income did not qualify for deduction of fees under the new criteria, the SOC must be recomputed immediately and a ten day NOA issued informing the beneficiary and the guardian/conservator of the change.

Any questions regarding this issue should be addressed to Toni Bailey at EMC2 address HDTBAIL or via telephone at (916) 657-3772.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

FINAL REGULATION R-55-90

TITLE 22, CALIFORNIA CODE OF REGULATIONS SECTION 50549.3 HAS BEEN AMENDED AS FOLLOWS:

Section 50549.3. Guardian/Conservator Fees. (a) Reasonable court approved guardian/conservator fees shall be allowed as a deduction to the unearned income of an aged, blind or disabled medically needy person if all of the following considerations are met:

- (1) The fees are paid to a court-appointed guardian or conservator of an individual who has been declared by a court to be ineapable-of-handling-his/her-own-finaneial-affairs substantially unable to manage his/her own financial resources and then only to the extent the fees are actually owed in the month in which the payment is made.
- (2) A court-appointed guardian or conservator is required by the entity paying the unearned income as a condition of rendering payment to incompetent persons.
- (3) The guardian or conservator provides a signed statement from the entity making such payment verifying the requirement as set forth in (a) (2).

(b) Payments rendered by the Social Security Administration or other entity to incompetent persons which may be made to a representative payee or other similar individual regardless of guardian/conservator status shall not be considered to meet the conditions specified in subsection (a) (2).

(b c) When the conditions set forth in subparagraph (a) are not met, the unearned income of an aged, blind, or disabled medically needy person which is used to pay ~~or~~ reasonable court ordered guardian/conservator fees shall be considered available in accordance with Section 50513.

NOTE: Authority cited: Sections 10725, 14124.5(a) and 14154.5(b) of the Welfare and Institutions Code. Section 435.831 in Title 42 of the Code of Federal Regulations; Section 1396a(r) in Title 42 of the United States Code.

REFERENCE: Sections 416.601 and 416.1123(b)(3) in Title 20 of the Code of Federal Regulation.

DRAFT INCOME PROCEDURES SECTION: TREATMENT OF GUARDIAN/CONSERVATOR FEES

APPLICATION OF SECTION 50549.3 TO LONG TERM CARE (LTC) CASES:

As with any other AFDC or SSI/SSP derived income deduction, eligible beneficiaries are entitled to receive the deduction when computing net income, but all such deductions must be added back in prior to determining the LTC SOC amount (Section 50653 (a)(2)). Only the income deductions allowed under Sections 50555.1 through 50555.4 and the appropriate maintenance needs may be used to determine the SOC of an applicant/beneficiary in LTC.

REASONABLE COURT APPROVED FEES:

Guardian/conservator fees are to be considered reasonable if the amount is reasonably related to the services performed during the month, are comparable to fees for similar services and the services covered by the fees are related to the administration of the conservatee's estate. Guardian/conservator fees may not include amounts for services such as beneficiary transportation, supervision or other services of a personal nature.

Because incompetent Medi-Cal applicant/beneficiaries generally have fixed income and little or no property, fees should remain fairly stable from month to month with very little variation. However, where an abnormal amount of activity takes place (i.e. unusual court activity, pursuit of funds from a former payee or guardian/conservator who has absconded with income or property, etc.), higher fees would be reasonable and allowable. Therefore, the guardian/conservator need only verify the fee amount yearly if the amount is a stable monthly fee, or whenever there is a change. Higher fee amounts cannot be allowed until the higher fee is determined reasonable by the county.

Therefore, upon the guardian/conservator's assertion that reasonable court approved fees exist and he/she has provided verification that the applicant/beneficiary has income from which fees are an allowable deduction, the county must request the following:

1. A copy of the court order authorizing payment of fees from the account of the applicant/beneficiary to the guardian/conservator. The order must include the amount of the fee and the month for which the fee is authorized.
2. A written statement from the guardian/conservator describing the services provided during the month, how the fee was calculated, including hours spent on the conservatee's affairs, and the rate being charged as well as any other costs included in the fee.

Upon receipt of the requested verification, the county is to presume the fees billed in the statement are reasonable provided the amount matches the amount shown in the court order and there is no circumstance which leads the county to believe that the fee amount should be questioned. Examples of fees which should be questioned would include fees which appear to be inflated when compared to fees for similar services by other guardian/conservators, fees for personal services, charges for services not related to the administration of the conservatee's estate, fees which vary constantly from month to month where there is no change to income, property, etc. and there is no court activity, etc.

Clarifying information regarding the reasonableness of a questionable fee must be requested from the guardian/conservator. The guardian/conservator must be given a reasonable time period to respond, however, the SOC calculation may not be held up past the first day of the SOC period pending clarification. Instead, in order to insure the applicant/beneficiary has prompt access to Medi-Cal, the SOC is to be calculated without the fee deduction and, where the reasonableness of the fee is later verified, may be adjusted later in accordance with 50653.3.

Where the guardian/conservator fails, without good cause, to cooperate in a timely manner in verifying or clarifying the fee amount shall result in a denial of the fee deduction.

AMEND SECTION 50549.3 TO READ:

Section 50549.3 Guardian/Conservator Fees.

(a) Reasonable court approved guardian/conservator fees shall be allowed as a deduction to the unearned income of an aged, blind or disabled medically needy person if all of the following conditions are met:

(1) The fees are paid to a court-appointed guardian or conservator of an individual who has been declared by a court to be ~~incapable of handling his/her own financial affairs~~ substantially unable to manage his/her own financial resources and then only to the extent the fees are actually owed in the month in which the payment is made.

(2) A court-appointed guardian or conservator is required by the entity paying the unearned income as a condition of rendering payment to incompetent persons.

(3) The guardian or conservator provides a signed statement from the entity making such payment verifying the requirement set forth in (2).

(b) Payments rendered by the Social Security Administration or other entity to incompetent persons which may be made to a representative payee or other similar individual regardless of guardian/conservator status, shall not be considered to meet the conditions specified in subsection (a) (2).

(b c) When the conditions set forth in subparagraph (a) are not met, the unearned income of an aged, blind, or disabled medically needy person which is used to pay reasonable court ordered guardian/conservator fees; shall be considered available in accordance with Section 50513.

NOTE: Authority cited: Sections 10725, 14124.5(a) and 14154.2(b) of the Welfare and Institutions Code. Section 435.831 in Title 42 of the Code of Federal Regulations; Section 139a(r) in Title 42 of the United States Code.

Reference: Sections 416.601 and 416.1123(b)(3) in Title 20 of the Code of Federal Regulations; Section 1383(a)(2)(A) in Title 42 of the United States Code and SI 00830.020 in the Procedures and Operations Manual System of the Social Security Administration.